

BEFORE THE DEPARTMENT OF ADMINISTRATION
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rule I and the amendment of ARM)	PROPOSED ADOPTION AND
2.5.120, 2.5.201, 2.5.202, 2.5.301)	AMENDMENT
through 2.5.303, 2.5.401, 2.5.402,)	
2.5.404 through 2.5.408, 2.5.501)	
through 2.5.503, 2.5.601 through)	
2.5.604, 2.5.606 through 2.5.609,)	
2.5.701, 2.5.702, and 2.5.801 pertaining)	
to procurement of supplies and services)	
and surplus property)	

TO: All Concerned Persons

1. On September 12, 2007, at 11:00 a.m., a public hearing will be held in Room 165 of the Mitchell Building, 125 North Sanders, Helena, Montana, to consider the proposed adoption and amendment of the above-stated rules.

2. The department will make reasonable accommodations for persons with disabilities who need an alternative accessible format of this notice. If you require an accommodation, contact the State Procurement Bureau no later than 5:00 p.m. on September 4, 2007, to advise us of the nature of the accommodation that you need. Please contact Gretchen Bingman, State Procurement Bureau, 125 North Sanders, Helena, MT 59620; telephone (406) 444-7210; Montana Relay Service 711; facsimile (406) 444-2529; e-mail to gbingman@mt.gov.

3. The proposed new rule provides as follows:

NEW RULE I CONTRACT RENEWAL (1) Prior to issuing a contract renewal, an agency must provide a written justification outlining the basis for renewal. Reasons illustrating justification for renewal may include, but are not limited to:

- (a) acceptable or outstanding performance of contract specifications;
- (b) cost-effectiveness of continuation of the contract; and/or
- (c) the requirements of the contract remain significantly the same.

AUTH: 18-4-221, MCA

IMP: 18-4-313, MCA

STATEMENT OF REASONABLE NECESSITY: This new rule is reasonably necessary to provide guidelines for agencies in developing renewal justifications to document the evaluation of the contract performance and appropriateness of renewal.

4. The rules as proposed to be amended provide as follows, stricken matter

interlined, new matter underlined:

2.5.120 THE STATE EMPLOYEES' CHARITABLE GIVING CAMPAIGN

(1) remains the same.

AUTH: 18-4-221, MCA

IMP: ~~18-4-221~~ 18-4-222, MCA

2.5.201 DEFINITIONS In these rules, words and terms ~~defined in Title 18, chapter 4, MCA,~~ shall have the same meaning as in defined in Title 18, chapter 4, MCA, the statutes and, unless the context clearly requires otherwise or a different meaning is prescribed for a particular ~~section~~ rule, the following definitions apply:

(1) "Agency" means an agency, bureau, commission, committee, council, department, governmental corporation, institution, legislative body, or other entity, instrumentality, or official of the executive, legislative, or judicial branch of the state government, including the Board of Regents and the Montana University System.

(2) remains the same.

(3) "Alternate bid" means a bid submitted in knowing variance from the specifications, terms, conditions, or provisions of the solicitation. Such a bid is acceptable only when the variance is deemed immaterial.

(4) remains the same.

(5) "Bid" means the executed document ~~submitted by a "bidder"~~ in response to an invitation for bid. "Bidder" means a person submitting a bid.

(6) remains the same.

(7) "Central Stores" means the proprietary program operated by the division's Property and Supply Bureau which develops standard specifications, procures, warehouses, and delivers certain supplies for state agencies. ~~The bureau also operates the state and federal surplus programs for eligible donees.~~

(8) and (9) remain the same.

(10) "Debar" or "debarment" means an action taken or decision made by the department, other than temporary determinations of nonresponsibility or suspension, that prohibits a vendor from proposing, bidding on, or receiving state contracts for a specific period of time or until certain conditions have been met.

(11) through (16) remain the same.

(17) "FOB" or "f.o.b." means free on board; a term used in conjunction with an identified physical location to determine:

(a) remains the same.

(b) the point at which title for the shipment passes from seller to buyer. Deliveries are usually "FOB destination" which means a shipment is to be delivered to the destination designated by the buyers.

(18) through (20) remain the same.

(21) "Nonexclusive contract" means that state agencies are not required to purchase this supply or service from the contract holder(s) and may obtain the necessary ~~service or supply~~ or service from a different source following the requirements of Title 18, MCA, and their agency procurement delegation agreement.

(22) through (30) remain the same.

(31) "Responsible bidder or offeror" means a person who has the capability

in all respects to ~~perform~~ fully perform the contract requirements and the integrity and reliability that will ensure good faith performance.

(32) through (36) remain the same.

(37) "State Procurement Bureau" means ~~that the~~ the bureau of the division responsible for procuring or supervising the procurement of all supplies and services needed by the state, ~~excluding those services procured by the Property and Supply Bureau and publications and graphics bureau~~ Print and Mail Services Bureau.

(38) and (39) remain the same.

~~(40) "Term contract" means a contract in which supplies or services are offered at a predetermined unit price for a specific period of time.~~

(41) through (44) remain the same, but are renumbered (40) through (43).

AUTH: 18-1-114, 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.202 DEPARTMENT OF ADMINISTRATION RESPONSIBILITIES

(1) remains the same.

(2) ~~The department's general services~~ division will establish a vendors list, determine eligibility for residence preference of vendors for purchases made under Title 18, chapter 4, MCA, investigate complaints against vendors, and remove vendors from the state list as described in ARM 2.5.401, 2.5.402, ~~2.5.403~~, and 2.5.407.

(3) ~~The department's general services~~ division shall process requisitions for agencies, for items not delegated, in accordance with ARM 2.5.302.

(4) Except as indicated in ARM 2.5.301, ~~the department's general services~~ division will identify and purchase all controlled items.

(5) through (5)(d) remain the same.

(6) ~~The department's general services~~ division delegates its procurement authority as follows:

(a) through (c)(iv) remain the same.

(7) ~~The department's general services~~ division will provide training to agencies on purchasing in accordance with delegated responsibilities.

(8) ~~The department's general services~~ division may perform reviews of agency purchasing procedures to ~~insure~~ ensure compliance with the delegation agreement, these rules, and Title 18, chapter 4, MCA.

(9) remains the same.

AUTH: 18-4-221, MCA

IMP: 2-17-301, 2-17-512, 18-4-221, 18-4-222, MCA

2.5.301 DELEGATION OF PURCHASING AUTHORITY (1) remains the same.

(2) Delegation and competitive procedures are not necessary for the following purchases:

(a) through (j) remain the same.

(k) fresh fruits and vegetables; and

(l) food products produced in Montana, subject to the provisions of 18-4-132,

MCA:

(m) advertising placed in publications or on radio, television, or other electronic means. Development, design, and distribution of the advertising is not included in this exception;

(n) educational instructors and guidance counselors for inmates under the supervision of the Department of Corrections; and

(o) books and periodicals purchased by the Montana State Library.

AUTH: 18-4-221, MCA

IMP: 18-4-132, 18-4-221, 18-4-222, 18-4-302, MCA

STATEMENT OF REASONABLE NECESSITY: Senate Bill No. 328 of the 2007 Legislature provides that food products produced in Montana may be procured by direct purchase under certain circumstances. The department is adding (2)(l) to make this option plain in rule. Newspaper, radio, and television advertisements are typically only available from limited vendors within a target area and so are excluded from competitive procedures. Due to the limited availability of many books and periodicals, the State Library is given authority to make book and periodical purchases without competition when available only from a single vendor.

2.5.302 REQUISITIONS FROM THE AGENCIES TO THE DIVISION (1) All agencies must complete the division's requisition form when a state purchase order or contract is required from the division. The requisition must be signed or electronically approved by an authorized agency official. Only items of a like nature (items ordinarily procurable from the same vendor) to be billed to one location shall be combined on one requisition. A separate requisition is required for each billing location. The requisition must be accompanied by specifications as described in ARM 2.5.501. Completed requisitions for:

(a) coarse paper, computer paper, computer software supported by Information Technology Services Division, fine paper, forms, flags, fire extinguishers, janitorial supplies, and office supplies shall be forwarded to the Property and Supply Bureau;

(b) requisitions for printing shall be forwarded to the Print and Mail Services Bureau; and-

(c) Completed requisitions for supplies and services (not listed above) shall be forwarded to the State Procurement Bureau.

(2) Agencies must obtain written approval as required for equipment described in ARM 2.5.202(5). Written approval must accompany the requisition.

(3) Upon receipt of a requisition, the division will initiate and schedule the solicitation. ~~The division will send a copy of the solicitation to the requesting agency for review prior to bid opening.~~

(4) through (4)(b) remain the same.

(c) has no evidence of approvals required in (2) ~~above~~; or

(d) through (5)(b) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.303 ENFORCING THE CONTRACT (1) Except for items purchased and warehoused by the division's ~~central stores program~~ Property and Supply Bureau, agencies are responsible for receiving supplies and services procured on their behalf by the department. Receiving means inspecting the supply or service and checking it against the contract to ensure that it is acceptable, complete, and in compliance with the terms of the contract.

(2) and (3) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.401 VENDORS LIST (1) The General Services Division maintains an online vendors list for all supply and service commodities. Names and addresses on the vendors lists shall be available for public inspection, ~~but these lists~~ this list shall not be used for private promotional, commercial, or market purposes as per 2-6-109, MCA.

(2) ~~To get be placed~~ To be placed on the vendors list, a vendor must register with the division ~~on a form supplied by the division~~, online at <http://www.vendor.mt.gov/>. Each vendor is responsible for keeping their information current, including categories, quote groups, and items of information sufficient to identify the supplies or services the vendor wishes to supply provide.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.402 SUSPENSION OR DEBARMENT FROM CONTRACT ELIGIBILITY

(1) The division has the authority to temporarily suspend a vendor from consideration for further contracts with the state if the division has probable cause to believe that the vendor has engaged in activities that could lead to debarment from contract eligibility. ~~Debarment applies both to a firm or an individual. In the case of a firm, it may be applied against any or all businesses in which a firm has involvement or over which it has ownership or control. In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership or control.~~ The causes for debarment include the following:

(a) through (g) remain the same.

(2) Debarment may apply to either a firm or an individual.

(a) In the case of a firm, it may be applied against any or all businesses in which a firm has involvement or over which it has ownership or control.

(b) In the case of an individual, debarment may be applied to and enforced against any and all businesses in which the individual has any level of interest, ownership, or control.

~~(2) (3)~~ (3) If there is probable cause to believe that any of the situations in (1) exist ~~as set out in (1)~~, the division shall mail a notice of suspension to the affected vendor or individual. The notice must state that:

(a) remains the same.

(b) bids or proposals will not be accepted from the suspended vendor or contracts awarded to the suspended vendor during the period of suspension; and

(c) the suspension is effective upon the date of issuance of the notice of suspension and, unless the suspension is terminated by the division or a court, ~~it will~~ remains in effect for a period not to exceed 90 calendar days.

(3) remains the same, but is renumbered (4).

(a) remains the same.

(b) notification of the vendor's right to a contested case hearing on the matter in accordance with the procedures set forth in Title 2, chapter 4, part 6, MCA; and

(c) remains the same.

~~(4)~~ (5) A written request for hearing must be received by the director from the vendor within 20 calendar days after the date of the mailing of the notice of debarment. Failure to timely request a hearing will constitute a waiver by the vendor of the opportunity for a contested case hearing and appeal and will result in the director or director's designee entering an order supporting the vendor's debarment ~~from contracting with the state for a specified period of time or until certain conditions are met.~~

~~(5)~~ (6) Upon timely receipt of a written request for a contested case hearing, the director shall appoint a hearing examiner in accordance with the procedures set forth in Title 2, chapter 4, part 6, MCA, to hear evidence in the matter and come to a determination as to whether the facts support the decision to debar the vendor ~~from contracting with the state for a specified period of time or until certain conditions are met.~~

~~(6)~~ (7) The division shall maintain a list of debarred vendors on its web site at <http://www.discoveringmontana.com/doa/gsd>
<http://gsd.mt.gov/procurement/debarredsuspendedvendors.asp>.

AUTH: 18-4-221, MCA

IMP: 18-4-241, 18-4-308, MCA

2.5.404 BID AND PROPOSAL PREPARATION (1) and (2) remain the same.

(3) The price for each item must be stated and shall be clearly shown in the space provided on the form included as part of the bid. Only one unit price shall be shown for each item unless specific provision is made in the form for an optional figure. The price of each item shall be extended to show the total price for the quantity requested. In case of error in extension, the unit price shall prevail.

(4) through (7) remain the same.

(8) Vendors ~~will~~ must offer a firm price for 30 days after a bid ~~or proposal~~ opening, or 120 days after a proposal opening, pending award, unless otherwise provided for in the invitation for bids or request for proposals.

(9) remains the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, 18-4-303, MCA

2.5.405 BLIND VENDORS' BIDDING PREFERENCE (1) A blind person wishing to claim the vending facility preference provided in 18-5-502, MCA, must

complete the determination form provided by the State Procurement Bureau. The form must be completed by an ophthalmologist, physician skilled in diseases of the eye, or a ~~state of Montana~~, Department of Public Health and Human Services, visual services counselor.

(2) A determination form shall be submitted with each individual bid. The determination form shall be valid for six months. At the end of the six-month period, a new determination form will be required or submitted with bids. A new determination form will be required for renewal of a contract if the contract renewal date exceeds six months from the completion date of the original determination form.

AUTH: ~~18-5-501~~ 18-5-504, MCA

IMP: ~~18-5-501~~ 18-5-502, MCA

2.5.406 VENDOR PROTEST (1) through (2)(b) remain the same.

~~(3) "Days" mean calendar days as defined in ARM 2.5.201.~~

(4) remains the same, but is renumbered (3).

AUTH: 18-4-221, 18-4-242, MCA

IMP: 18-1-402, ~~18-4-221~~, 18-4-242, MCA

2.5.407 DETERMINATION OF RESPONSIVENESS/STANDARDS OF RESPONSIBILITY (1) and (2) remain the same.

(3) If a determination of nonresponsiveness is made, nonresponsive bids ~~and~~ or offers ~~will be~~ are disqualified and eliminated from further consideration.

(4) through (4)(e) remain the same.

(5) If requested, a bidder or offeror must supply information concerning responsibility to the procurement officer ~~concerning responsibility~~ in a timely and convincing manner. If the bidder or offeror fails to supply the requested information, the procurement officer may base a determination of responsibility upon any available information, or may find the bidder or offeror nonresponsive.

(6) through (8) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-1-308, MCA

2.5.408 RECIPROCAL PREFERENCE (1) remains the same.

(2) A reciprocal preference is applied only to an invitation for bids for supplies and printing, or an invitation for bids for nonconstruction services for public works as defined in 18-2-401~~(9)~~, MCA, but only in the event that federal funds are not involved in the anticipated purchase. In addition, a reciprocal preference is only applied if it will benefit a Montana resident bidder as defined in 18-1-103, MCA.

(3) through (5) remain the same.

AUTH: 18-1-114, 18-4-221, MCA

IMP: 18-1-102, 18-7-107, MCA

2.5.501 SPECIFICATIONS (1) Specifications shall clearly describe the

state's requirements and allow for the obtaining of a supply or service which is adequate, and suitable, and cost-effective for the state's needs in a cost effective manner. Specifications may take into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs and shall permit maximum practicable competition consistent with this purpose.

(2) Specifications shall, to the extent practicable, emphasize functional or performance criteria and limit design or other detailed physical descriptions to those necessary to meet the needs of the state. To facilitate the use of the criteria, an agency shall attempt to include as a part of their requisitions the principal functional or performance needs to be met, and any compatibility requirements.

(3) remains the same.

(4) Brand name items or descriptions may be used to indicate standards of quality, performance, and/or use desired.

(5) remains the same.

(6) A specification for a specific brand of supplies or services may be used if the requesting agency has a documented need to maintain a standard of performance and compatibility with existing supplies, equipment, or staff experience.

(7) through (7)(c)(iv) remain the same.

(d) description of other requirements, such as warranty, training, parts, manuals, service, etc.;

(e) description of any unusual conditions, such as installation, field tests, fiscal year funding source, etc.;

(f) date commodity is to be delivered.;

(g) location where commodity is to be delivered.;

(h) name, address, and phone number of agency contact person; and

(i) receiving procedures (if testing, sampling, or other evaluation will be performed when commodity is delivered to determine acceptability) must be described.

AUTH: 18-4-232, MCA

IMP: 18-4-231, 18-4-232, 18-4-233, through 18-4-234, MCA

2.5.502 BID, PROPOSAL, AND CONTRACT PERFORMANCE SECURITY

(1) ~~The state may, at its discretion, if the state requires bid or proposal security and/or contract performance security for the procurement of services and supplies, the types of security that may be used are those specified in 18-4-312, MCA.~~

(2) ~~Bid or proposal security and contract performance security requirements must be stated in the invitation for bids or the request for proposals.~~

(3) ~~The preferred types of security are bonds as described in 18-4-312(3)(a), MCA, and cash as described in 18-4-312(3)(c) and (d), MCA. The security must be payable to the state of Montana and the contract performance security must remain in effect for the entire contract period. The department will supply bid and proposal security bond and contract performance security bond forms when security is required. These are the only acceptable forms for surety bond or irrevocable letter of credit submission.~~

~~(a) If a certificate of deposit, money market certificate, cashier's check,~~

~~certified check, irrevocable letter of credit, bank money order, or bank draft is determined to be acceptable, it must be issued from a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation or that is drawn and issued by a credit union insured by the national credit union share insurance fund.~~

~~(b) Irrevocable letters of credit in excess of \$100,000 from a single financial institution will not be accepted as security for contracts.~~

~~(c) remains the same, but is renumbered (3).~~

~~(d) (4) Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to the state. All interest income from these certificates must accrue only to the contractor and not the state.~~

~~(4) through (5) remain the same, but are renumbered (5) through (6).~~

~~(6) (7) Factors to consider in requiring contract performance security and in determining the amount of security include:~~

~~(a) through (e) remain the same.~~

~~(f) damages chargeable to the state if the contractor defaults; and~~

~~(g) remains the same.~~

~~(7) remains the same, but is renumbered (8).~~

AUTH: 18-4-221, MCA

IMP: 18-1-201, 18-4-312, MCA

STATEMENT OF REASONABLE NECESSITY: House Bill No. 67 of the 2005 Legislature removed the stipulation that an irrevocable letter of credit provided as bid or contract security could not exceed \$100,000. ARM 2.5.502 is being amended to reflect this change as well as to clarify the language and remove unnecessary wording that is repetitive of statute.

2.5.503 PUBLIC NOTICE (1) and (2) remain the same.

(3) Where appropriate, the state may require payment of a fee or a deposit for supplying the invitation for bids or request for proposals.

(4) remains the same.

(5) Notice of public meetings conducted to evaluate requests for proposals must be posted to the division's web site no less than 72 hours in advance of the meeting.

AUTH: 18-4-221, MCA

IMP: 18-4-303, 18-4-304, MCA

STATEMENT OF REASONABLE NECESSITY: The addition of ARM 2.5.203(5) is necessary to specify the minimum time requirement for posting of evaluation meetings.

2.5.601 COMPETITIVE SEALED BIDS (1) through (3) remain the same.

(4) Where a brand name specification is used in a solicitation, the solicitation

shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired, and is not intended to limit or restrict competition. When bidding an "or equal" product, the burden of persuasion is on the bidder ~~that has not been specified~~ to convince the procurement officer that their product is, in fact, equal to the one specified. The procurement officer is given the responsibility and judgment for making a final determination ~~on~~ of whether a proposed substitution is equal to the brand name specified.

(5) and (6) remain the same.

(7) Bids shall be opened publicly at the time, date, and place designated in the invitation for bid.

(8) through (11) remain the same.

(12) In the case if a tie bid, the ~~The~~ discretion of the division or the head of a purchasing agency, will be used to resolve the such bids, except that a bidder offering American-made products or supplies must be given preference.

(13) through (15) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-303, MCA

STATEMENT OF REASONABLE NECESSITY: Senate Bill 459 (2007) amended 18-4-303, MCA, to provide for a preference to be given to an offeror of American-made products in the case of a tie bid. This information is added to rule to make clear that requirement.

2.5.602 COMPETITIVE SEALED PROPOSALS (1) remains the same.

(2) Competitive sealed proposals, solicited through a request for proposals, may be practical when one or more of the following conditions exist:

(a) through (d) remain the same.

(e) price will only be one of ~~several~~ the criteria considered in determining an award, ~~if evaluated at all.~~

(3) The request for proposals must be prepared in accordance with ARM 2.5.601 ~~(2) through (5)~~ and must also include:

(a) through (5) remain the same.

(6) Proposals shall be time-stamped upon receipt and held in a secure place by an employee of the agency until the ~~established time~~ due date specified in the request for proposals.

(7) remains the same.

(8) For the purpose of conducting discussions, proposals shall be initially classified as:

~~(a)~~ responsive; or

~~(b)~~ nonresponsive.

(i) remains the same, but is renumbered (a).

(A) through (C) remain the same, but are renumbered (i) through (iii).

(ii) remains the same, but is renumbered (b).

(9) Discussions including oral presentations, interviews, demonstrations, responses to specific questions, modifications, and negotiations may be held with

one or more offerors to:

(a) and (b) remain the same.

~~(c) Discussions may include oral presentations, interviews, demonstrations, responses to specific questions, modifications, and negotiations.~~

(d) remains the same, but is renumbered (10).

(10) through (15) remain the same, but are renumbered (11) through (16).

AUTH: 18-4-221, MCA

IMP: 18-4-304, MCA

2.5.603 SMALL PURCHASES OR LIMITED SOLICITATIONS OF SUPPLIES AND SERVICES (1) through (3) remain the same.

(4) This rule does not apply to controlled items purchased through exclusive term contracts, requisition time schedules, the Central Stores Program, or the Print and Mail Services Bureau unless specifically delegated in a written delegation agreement to the agency.

(5) through (6)(d) remain the same.

AUTH: 18-4-221, MCA

IMP: 18-4-305, MCA

2.5.604 SOLE SOURCE PROCUREMENT (1) through (6)(b) remain the same.

(c) renewal of software license agreements; ~~or~~

(d) purchase or renewal of maintenance agreements for software or hardware; ~~or~~ and

(e) remains the same.

AUTH: 18-4-221, MCA

IMP: 18-4-306, MCA

2.5.606 PROCUREMENT OF USED EQUIPMENT (1) through (3) remain the same.

(a) consideration of the type, use, and life expectancy of new versus used equipment;

(b) through (d) remain the same.

(e) investigation of manufacturer or brand and availability of warranty, maintenance, and parts; and

(f) remains the same.

AUTH: 18-4-221, MCA

IMP: 18-4-221, MCA

2.5.607 PROCUREMENT FROM SHELTERED WORKSHOPS OR WORK ACTIVITY CENTERS (1) remains the same.

(2) The division ~~will~~ maintains a list of certified sheltered workshops or work activity centers, as defined in 18-5-101, MCA, located in the state. The list ~~will~~

includes the supplies and services provided by each. The list ~~will be~~ is available to ~~user agencies on the division's web site at~~
<http://gsd.mt.gov/procurement/shelteredworkshops.asp>.

AUTH: 18-5-102, MCA

IMP: 18-5-102, 18-5-103, MCA

2.5.608 DIRECT NEGOTIATION (1) When none of the responses to invitations for bids or requests for proposals received in response to a valid solicitation are from a responsible and responsive bidder or offeror, as defined in 18-4-301, MCA, the procurement officer may:

(a) and (b) remain the same.

(2) Subject to conditions in (1) and the intent of 18-4-122, MCA, the determination as to whether a procurement will be made by direct negotiation must:

(a) be in writing; ~~must~~

(b) state the basis for the direct negotiation and for the selection of a particular vendor; ~~and must~~

(c) be approved by the department.

AUTH: 18-4-133, 18-4-221, MCA

IMP: 18-4-133, MCA

2.5.609 ALTERNATIVE PROCUREMENT METHODS (1) An agency may request authorization from the ~~department~~ division to pursue an alternative procurement method for obtaining a supply or service.

(2) If an alternative procurement method is approved, the ~~department~~ division shall:

(a) through (c) remain the same.

AUTH: 18-4-221, 18-4-302, MCA

IMP: 18-4-302, MCA

2.5.701 AUTHORITY TO DISPOSE OF SUPPLIES (1) remains the same.

(2) State agencies shall notify the division's property and supply bureau of all surplus supplies ~~on forms available at the bureau~~. The entity may suggest a dollar value per item or per lot, but the suggestion does not constitute the minimum sale or transfer amount. The figures are not public information prior to transfer or sale.

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

2.5.702 DISPOSITION OF SURPLUS SUPPLIES (1) The division's ~~property and supply bureau~~ may transfer surplus supplies to other state agencies and other units of government.

(2) Surplus supplies may be offered to the public by the division's ~~property and supply bureau~~ through competitive sealed bids, public auction, established markets, or posted prices. It is recognized, however, that some types and classes of

items can be sold or disposed of more readily and advantageously by other means, including barter. In such cases, and also where the nature of the supply or unusual circumstances call for its sale to be restricted or controlled, the division may employ such other means, including appraisal, if the division makes a written determination that such procedure is advantageous to the state.

(a) On sales greater than \$300, only United States postal money orders, certified checks, cashier's checks, or business checks may be accepted.

(3) If a sale is to be made by competitive sealed bidding, notice of the sale must be given at least ten days before the date set for opening bids by posting the bid on the state's bids and proposals web site at

<http://mt.gov/doa/gsd/osbs/default.asp> <http://gsd.mt.gov/osbs/default.asp>.

(a) through (8) remain the same.

AUTH: 18-4-226, MCA

IMP: 18-4-226, MCA

2.5.801 ADOPTION OF STATE PLAN OF OPERATION - FEDERAL SURPLUS PROPERTY (1) As authorized by 18-5-202, MCA, the Department of Administration (~~hereinafter department~~) hereby adopts and incorporates by reference the "State of Montana, Federal Surplus Property Plan of Operation in Compliance with 41 FR 101-44 and Public Law 94-519" (~~referred herein as the State Plan of Operation~~) promulgated by the department and filed with the General Services Administration of the United States government on July 1, 1977, and as revised March 19, 1984, pursuant to section 201(j)(4) of the Federal Property and Administrative Services Act of 1949 (40 USC 484).

(2) The State Plan of Operation establishes the operating procedure and practices to be followed by the department for the fair and equitable distribution of federal surplus personal property to those units of state and local government and certain nonprofit, tax-exempt, educational, and health institutions as are determined to be eligible to receive such surplus personal property under section 203(j) of the act.

(3) Copies of the State Plan of Operation may be obtained from the Department of Administration, General Services Division, P.O. Box 200137, Helena, Montana 59620-0137.

AUTH: 18-5-202, MCA

IMP: 18-5-202, MCA

STATEMENT OF REASONABLE NECESSITY: Except as noted with individual rules, these proposed rule amendments are a result of the division's biennial review of rules and are being made to conform the rules to the current requirements of the Secretary of State's office. Improvements to rule language, grammatical changes, and updates to web addresses are included to clarify and correct rule text where appropriate. In addition, corrections and updates to statutes cited as giving authority and/or being implemented by rule are being made as part of this required review.

5. Concerned persons may present their data, views, or arguments, either

orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to Gretchen Bingman, State Procurement Bureau, 125 North Sanders, Helena, MT 59620; telephone (406) 444-7210; facsimile (406) 444-2529; e-mail to gbingman@mt.gov, and must be received no later than 5:00 p.m., September 21, 2007.

6. Brad Sanders, Bureau Chief, State Procurement Bureau, has been designated to preside over and conduct the hearing.

7. An electronic copy of this Notice of Proposed Adoption and Amendment is available through the department's web site at <http://doa.mt.gov/AdministrativeRules.asp>. The department strives to make the electronic copy of this notice conform to the official version of the notice as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that a person's technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

8. The State Procurement Bureau maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this office. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding State Procurement Bureau and/or Property and Supply Bureau rulemaking actions. Such written requests may be mailed or delivered to Gretchen Bingman, State Procurement Bureau, 125 North Sanders, Helena, MT 59620; faxed to the office at (406) 444-2529; e-mailed to gbingman@mt.gov; or may be made by completing a request form at any rules hearing held by the department.

9. The bill sponsor notice requirements of 2-4-302, MCA, apply and have been fulfilled. Senator Larry Jent, the primary bill sponsor of HB 67 (2005), was notified on July 31, 2007, by regular mail. Senator Donald Steinbeisser, the primary bill sponsor of SB 328 (2007), was notified on July 31, 2007, by regular mail. Senator Jim Elliott, the primary bill sponsor of SB 459 (2007), was notified on July 31, 2007, by regular mail.

By: /s/ Janet R. Kelly
Janet R. Kelly, Director
Department of Administration

By: /s/ Dal Smilie
Dal Smilie, Rule Reviewer
Department of Administration

Certified to the Secretary of State August 13, 2007.